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NEWS

COVER STORY

Conned investors may never see refunds SEC collection rate falls sharply since '94
Kevin McCoy

The Securities and Exchange Commission has fallen badly behind in its collections of illegal gains from stock swindlers and other scam artists, leaving many fraud victims waiting for refunds that might never come, a USA TODAY analysis of SEC records shows.

(Publication page references are not available for this document.)
The SEC, the federal government's investment industry regulator, collected 16.9% of the more than \$1.7 billion in illegal gains that financial violators have been ordered to hand over since 1995.

The recovery rate -- about \$1.69 of every \$10 owed -- represents a sharp drop from the 50% collection success found in a review of 1987-94 collections by the General Accounting Office (GAO), the investigative arm of Congress.

The SEC does not maintain comprehensive records of how much has been repaid to fraud victims, even though the agency has worked to boost its investor-friendly image and the GAO report recommended such a tracking system.

Besides the low collection rate overall, the USA TODAY analysis found that the SEC has not collected one penny in 10 large cases involving violators who collectively owe \$540 million under so-called disgorgement orders.

Additionally, only in October 1999 did the SEC appoint its first collections administrator, an executive assigned to keep track of

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hundreds of cases scattered across the country as lawyers change jobs within the agency or leave for positions elsewhere.

As a result, thousands of investors who say they were scammed in financial frauds worry whether they will ever recover even a portion of their investments.

Claude Bamberger, 81, a Tenafly, N.J., retiree, frets about what he calls the equipment-leasing fraud that cost him much of his \$130,000 investment -- reducing the savings he hopes to leave for his children.

James O'Brian, 53, of Llano, Texas, says he has all but given up hope of recovering the \$25,000 he says he lost in a business loan scam.

Ronald Crawford, 64, a La Quinta, Calif., retiree, says he has to remind himself not to obsess over the \$500,000 inheritance he says he sank into what turned out to be a business fraud.

Though the amounts and circumstances of their losses vary, many (Publication page references are not available for this document.)

victims are unanimous in dismay about what they view as a lackluster effort by the SEC.

"These people just don't pursue white-collar crime the way they should," Crawford says. "I've even thought about filing a class-action suit against the government over this."

Recovery a priority

The low collection rate is "really unfortunate," SEC Chairman Arthur Levitt says. "And it's something we try to address. But given limited resources, if I had the choice between putting on more bill collectors or bringing more cases, I'd opt for the latter." For many violators, he adds, the difficulty of facing SEC allegations in court and being exposed to unwelcome publicity "is a far greater penalty than the financial penalty."

Asked why there is no comprehensive tracking of refunds paid to investors burned by scams, other officials said the existing computer systems are "sufficient." The GAO report that recommended the tracking system has never been updated, and no government or private (Publication page references are not available for this document.)

organizations have raised the issue in recent years.

Still, Levitt and other SEC officials acknowledge that recovering illegal gains and repaying victims are part of the agency's mission. "In every instance where it's feasible, we attempt to return the money to investors. There are no exceptions," says Joan McKown, chief counsel of the agency's enforcement division.

The agency's 1987-94 collection rate was far higher, agency officials say, because the SEC received roughly \$2 billion in payments from former junk bond king Michael Milken, Prudential Securities and other major violators during those years.

SEC collection efforts are handled either by the several dozen agency lawyers assigned to litigation or by private, court-appointed receivers. They hunt for any assets owned by the violators and seek contempt orders against those who fail to pay.

The SEC says money the receivers get from violators isn't officially recorded as collected until courts sign off and the agency actually receives the funds. For that reason, agency officials say (Publication page references are not available for this document.)

the recovery total may eventually be higher than the amounts currently reflected in SEC records.

When all other collection efforts fail, the SEC turns the cases over to the U.S. Treasury Department. Over time, many cases are written off as uncollectible, SEC records show.

To be sure, the collection work is often difficult, no matter who does the job. Some violators declare bankruptcy, forcing the SEC to wait with other creditors for any remaining funds. Other violators are in prison. Some say they're broke, a claim the SEC works to verify before granting repayment waivers. Still others have moved the illegal gains to offshore accounts, where legal barriers may thwart recovery.

"The sophisticated kind of securities-law violator the SEC goes after will have transferred his assets or hidden them," says Judith Starr, an SEC assistant chief litigation counsel. "He's not going to be sitting there on a pile of gold, sticking his tongue out."

Robert E. Brennan certainly wasn't. The business executive waged a (Publication page references are not available for this document.)

long federal court fight against the SEC's right to collect a nearly \$72 million 1995 repayment judgment for what the agency charged was a massive securities fraud against customers of his First Jersey Securities. The U.S. Supreme Court declined to hear his appeal in 1997.

Aided by SEC lawyers, a bankruptcy trustee has taken control of the finances of a Colts Neck, N.J., golf course and other assets that government lawyers say Brennan transferred to partnerships in a bid to thwart collection efforts.

But Brennan has fought on while he prepares for a new court date this month, this time on criminal charges of bankruptcy fraud. In recent months, his attorneys have battled with the SEC over the Palm Beach Princess, a Florida-based gambling ship that the government says provided Brennan with a secret income shielded by trusts based in Gibraltar.

Still, the SEC hasn't collected anything in the case -- at least not yet. "The receiver has Brennan's golf course. But it's subject to the bankruptcy court proceedings," says agency spokesman John Heine.

(Publication page references are not available for this document.)

Brennan's attorney, Michael Critchley, did not return calls, and Brennan did not respond to a message left on the answering machine at the golf course executive office.

Tough to collect

Similarly, the SEC has yet to recover any of the nearly \$147.2 million owed by the agency's top non-payer: Richard Goettlich, former president of New Jersey-based First Interregional Equity and a subsidiary, First Interregional Advisors. The parent company was a brokerage that has since been liquidated. The now-bankrupt subsidiary was an equipment lease-financing firm.

Goettlich pleaded guilty in 1998 to securities fraud for a scheme in which the subsidiary repeatedly resold identical leases on government-rented photocopying machines to investors such as Bamberger and about 7,000 others. The firm collected about \$295 million from investors, nearly three times its actual lease inventory, court records show.

(Publication page references are not available for this document.)
Richard Hill, a court-appointed receiver in the case, says he has located "very little at this point in the way of assets from Mr. Goettlich" that could be used to repay investment victims.

Bamberger says investigators cautioned he probably would recover no more than 35% of his investment as the receiver identifies and seizes assets from the former Goettlich firms. Bamberger, former owner of a New Jersey plastics company, says the loss has cut the amount he can pass to his children.

"They're not exactly swimming in money," Bamberger says. "They're saving for the education of my grandchildren and can ill afford to lose money like this."

Goettlich is awaiting a federal court sentencing in New Jersey. He did not return messages left on an answering machine at his Florida home. His attorney, Jerome Ballaroto, also did not return calls.

Crawford, the La Quinta, Calif., retiree, is waiting for the SEC to collect and redistribute \$24 million that federal prosecutors say Brent A. Wagman, a former Texas oil and gas company executive, bilked (Publication page references are not available for this document.)

from more than 500 elderly investors in about 20 states. The prosecutors and SEC say the fraud involved the sale of business loans for Redbank Petroleum and AmeriTech Petroleum. Wagman lured investors with assurances the notes were risk-free, then diverted the funds to other ventures, authorities say.

Wagman fled to Panama last year during an investigation. FBI agents caught him and returned him to Dallas, where he pleaded guilty to securities fraud and contempt of court. On Dec. 20 in Dallas federal court, Wagman was sentenced to five years in prison and ordered to pay more than \$19 million in restitution.

Crawford, a retired medical records administrator at UCLA Medical Center, says he is "furious with the government and the receivers" while awaiting the closing chapter in what he calls the scam that cost him the bulk of his inheritance.

While the loss hasn't left him broke, Crawford nonetheless feels the SEC should pay as much attention to repaying victims of financial scams as to stopping the scammers. "I want my money back from somebody, somewhere. And I will not rest until I get it," he says.

(Publication page references are not available for this document.)

Crawford could be in for a long wait. The court-appointed receiver in the Wagman case, Joseph Wielebinski, says he's only recovered a few hundred thousand dollars, chiefly from the sale of a Florida home owned by Wagman.

Despite the frustrated collection effort in the Wagman case and others, the SEC has had a few notable successes the past six years.

Many, like the case against Milken, involved well-known investment industry people who sought to clear their legal and financial slates and reputations by paying up.

PaineWebber, for instance, paid \$40 million in a 1996 agreement to establish a claims fund for conservative clients whom SEC officials said the investment giant steered to inappropriately risky investments. The firm settled without acknowledging or denying guilt.

A staffing issue?

The SEC could improve its performance by expanding the staff of several dozen attorneys now assigned to collection cases, says (Publication page references are not available for this document.)

Richard Scheff, the Philadelphia lawyer for a violator who was recently forced to turn over about \$1 million in assets. Leaving cases to receivers, who are paid from the funds they recover, means less money to repay fraud victims, Scheff says.

"The SEC tries to get a big splash in the press for disgorgement cases but doesn't do very much to actually collect," he says.

While defending their record, SEC officials say receivers have greater legal clout because they are official officers of the court.

They add that pursuing more of the collections in-house would necessitate hiring bankruptcy law experts -- the bill collectors cited by Levitt -- a costly change of focus for an agency whose main mission is securities regulation.

Whatever it takes, says James O'Brian, who's smarting over the \$25,000 a North Carolina broker persuaded him to sink into the AmeriTech business loan fraud run by Wagman.

"In my opinion, they should do more to go after any money he has, (Publication page references are not available for this document.)

any place."

Contributing: Noelle Knox

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SEC recovers only a tiny portion of illegal profits

The government's financial industry regulator collects only a fraction of the illegal profits reaped by pyramid scheme artists and other alleged securities law violators. Amounts shown in millions:

Year	Estimated fraud	Amount recovered	Percentage recovered
1995	\$302	\$61	20.2%
1996	\$160	\$68	42.5%
1997	\$133	\$35	26.3%
1998	\$312	\$87	27.9%
1999	\$544	\$29	5.3%
2000	\$278	\$12	4.3%
Total	\$1,729	\$292	16.9%

(Publication page references are not available for this document.)
Source: USA TODAY compilation and analysis of Securities and Exchange Commission data

Analysis of SEC records shows top violators from 1995-2000 who have failed to turn over illegal profits

The Securities and Exchange Commission has been unable to recover anything from dozens of violators ordered by courts to turn over illegal profits. The top non-payers from 1995 to 2000, according to a USA TODAY analysis of SEC records:

* Richard Goettlich has been ordered to repay \$147.2 million. He awaits federal sentencing on a securities fraud conviction in New Jersey as prosecutors prepare for a criminal trial against his father and other relatives. His attorney, Jerome Ballaroto, did not return messages left with secretaries at his office. Goettlich did not return messages left at his Florida home.

* HGI Inc., a former Jericho, N.Y., brokerage, has been ordered to repay \$90.3 million. The SEC says the company "systematically defrauded investors" in a boiler-room scheme involving sales of high-risk securities. (Publication page references are not available for this document.)

Martin Unger, the attorney for former HGI chairman Mark Hanna, said a court-ordered stay has put the case on hold while federal prosecutors weigh potential criminal charges.

* Robert E. Brennan has been ordered to repay \$71.5 million for what the SEC charged was a massive securities fraud against former customers of his First Jersey Securities firm during the mid-1980s. He is preparing for a federal bankruptcy fraud trial in New Jersey. His attorney, Michael Critchley, did not return calls. Brennan did not respond to messages left at his New Jersey golf course and real estate complex.

* Sam Antar has been ordered to repay \$57.5 million for alleged insider trading of stock in Crazy Eddie Inc., a now-defunct New York City-area discount electronics chain. Once headed by Antar's son, Eddie, the company was at the center of a major stock fraud during the 1980s. Antar is challenging the SEC collection effort. His attorney, Bruce Goldstein, did not return calls left with secretaries at his law office. Antar's son has finished serving a prison term for the fraud.

(Publication page references are not available for this document.)

* Euro-Scotia Funding (USA), a Delaware affiliate of a British Virgin Islands corporation, has been ordered to pay \$43.1 million. The company was run by Robert Colgin Wilson, a former Florida investment promoter. In 1998, he was convicted and sentenced to 57 months in prison for what authorities said was a securities fraud conspiracy that led to the collapse of a Florida insurance firm. Wilson's attorney, David Roth, did not return messages left at his Florida law office.

* Anthony J. Marino has been ordered to pay \$31.5 million for what an SEC lawsuit alleged was his role in a bank securities scheme that defrauded investors. He was previously convicted of securities fraud in an unrelated Nevada case. Marino is in a Costa Rica prison on other fraud charges, Utah County investigators say. His attorney, Max Wheeler, did not respond to messages left with secretaries at his law office.

* Robert N. Taylor has been ordered to pay \$29.5 million. He is serving a 41-month federal prison sentence for running the Better Life Club of America, a Washington, D.C.-based Ponzi scheme that prosecutors and the SEC say defrauded hundreds of investors.

(Publication page references are not available for this document.)

* Basic Energy and Affiliated Resources owes \$24.7 million. SEC investigators say the former Michigan firm sold high-risk energy investments to more than 1,000 clients. Several former executives of the firm settled allegations in an SEC lawsuit by agreeing to repay profits from the alleged scam. Elmer Heist, a Kentucky lawyer whom court records show represented the firm, did not respond to messages seeking comment left on his office answering machine.

* Brent A. Wagman, a former Texas oil and gas company executive, has been ordered to pay \$24 million for defrauding hundreds of investors in a business loan scheme. Wagman, who was sentenced to a five-year prison term on Dec. 20, could not be reached for comment because he has been held in federal custody since the FBI arrested him in Panama.

* Ronald H. Michel has been ordered to pay \$20.5 million. The court judgment against the California businessman and several co-defendants stems from an SEC lawsuit that accused the group of running a telemarketing scam that sold shares in wireless cable TV firms. Michel, who is awaiting a federal trial in California on money-
(Publication page references are not available for this document.)

laundering and other charges, could not be located for comment. His bankruptcy attorney, Daniel Lev, did not return messages. <HR>

What to do if you suspect fraud

You risked your savings on what seemed like a sure thing. But lately you've been sweating some warning signs. A profit check failed to arrive. The financial statements seem odd. What should you do? Some tips from government regulators:

* Seek answers quickly. By law, you have only a limited time to start legal action.

* If you did your homework when you invested, you got your investment agreement and other details in writing. The paperwork could be your lifeline if the investment turns out to be a fraud.

* Contact your broker and pinpoint the problem. Try to determine who, if anyone, might be at fault.

* Not satisfied? Bring your questions to your broker's supervisor.

(Publication page references are not available for this document.)

* If that doesn't work, contact the compliance department at the main office of your broker's firm. Request a written response within 30 days.

* More worried than ever? Contact the Securities and Exchange Commission's Office of Investor Education and Assistance.

The office has an online complaint form at the SEC Web site. Go to www.sec.gov. Click on the Investor Assistance and Complaints button.

* You can also contact the nearest office of the NASD Regulation office. The agency has its own online complaint form at its Web site, www.nasdr.com/2100.htm.